Local 1263, International Brotherhood of Painters and Allied Trades, AFL-CIO (Dunlap & Company, Inc.) *and* Bob R. Hawkins. Case 25-CB-4374

June 16, 1981

DECISION AND ORDER

Upon a charge filed on November 20, 1980, by Bob R. Hawkins, an individual, herein called the Charging Party, and duly served on Local 1263, International Brotherhood of Painters and Allied Trades, AFL-CIO, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint and notice of hearing on December 24, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On March 9, 1981, counsel for the General Counsel filed directly with the Board a motion to transfer the case to and continue the proceedings before the Board and a Motion for Summary Judgment based on Respondent's failure to file an answer as required by Sections 102.20 and 102.21 of the National Labor Relations Board Rules and Regulations, Series 8, as amended. Subsequently, on March 13, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless an answer to the complaint was filed within 10 days from the service thereof "all of the allegations in the complaint shall be deemed to be admitted true and may be so found by the Board." Further, Respondent was notified by GSA teletype message (confirmed) on February 24, 1981, that an answer to the complaint had not been received and that summary judgment would be sought unless an answer to the complaint was filed by February 27, 1981. As noted above, Respondent has not filed an answer to the complaint, nor did it respond to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rules set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.[1]

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

At all times material herein, the Employer, Dunlap & Company, Inc., an Indiana corporation with its principal office and place of business in Columbus, Indiana, has been engaged in the business of providing and performing general and mechanical contracting services and related services. During the 12-month period ending November 20, 1980, the Employer, in the course and conduct of its business operations, purchased and received at its facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Indiana. During this same 12-month period, the Employer, in the course and conduct of its business, derived revenues in excess of $900,000.

We find, on the basis of the foregoing, that the Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

[1] *Eagle Truck and Trailer Rental Division of E.T. & T. Leasing, Inc.*, 211 NLRB 804 (1974).

II. THE LABOR ORGANIZATION INVOLVED

Local 1263, International Brotherhood of Painters and Allied Trades, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

On or about November 13, 1980, Respondent demanded that the Employer discharge employee Bob R. Hawkins. Respondent's demand that Hawkins be terminated was predicated on Hawkins not being a member of Respondent, and for reasons other than Hawkins' failure to tender periodic dues and the initiation fee uniformly required as a condition of acquiring or retaining membership in Respondent.

We find that by attempting to cause and causing the Employer to discharge employee Hawkins in the circumstances described above and in the complaint, Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Union, set forth in section III, above, occurring in connection with the business operations of the Employer described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Respondent will be ordered to cease and desist from attempting to cause or causing Dunlap & Company, Inc., or any other employer to discriminate against Bob R. Hawkins, or any other employee, in violation of Section 8(a)(3) of the Act. We also shall order that Respondent request in, writing and with a copy to Hawkins, that the Employer offer reinstatement to Hawkins. In addition, Respondent shall be required to make Hawkins whole for any loss of earnings he may have suffered by reason of the discrimination against him until Hawkins is either reinstated by Dunlap & Company, Inc., to his former or substantially equivalent position, or until Hawkins obtains substantially equivalent employment elsewhere, less his net interim earnings.[2] The loss of earnings shall be computed as set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[3] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Dunlap & Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 1263, International Brotherhood of Painters and Allied Trades, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By attempting to cause and causing Dunlap & Company, Inc., to discriminate against Bob R. Hawkins in violation of Section 8(a)(3) of the Act Respondent violated Section 8(b)(1)(A) and (2) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local 1263, International Brotherhood of Painters and Allied Trades, AFL-CIO, Columbus, Indiana, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Dunlap & Company, Inc., or any other employer, to discriminate against Bob R. Hawkins, or any other employee, in violation of Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make Bob R. Hawkins whole for any loss of earnings he may have suffered by reason of the discrimination practiced against him in the manner provided in the section herein entitled "The Remedy."

(b) Post at its business office and meeting halls copies of the attached notice marked "Appendix."[4]

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[2] See *Sheet Metal Workers' Union Local 355, Sheet Metal Workers' International Association, AFL-CIO (Zinsco Electrical Products)*, 254 NLRB No. 92 (1981).

[3] Member Jenkins would compute interest on backpay in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by *Continued*

Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Forward to the Regional Director for Region 25 signed copies of said notice for posting by Dunlap & Company, Inc., if it is willing, at its Columbus, Indiana, facility for 60 consecutive days in places where notices to employees are customarily posted.

(d) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT cause or attempt to cause Dunlap & Company, Inc., to discriminate against Bob R. Hawkins or any other employee in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees of Dunlap & Company, Inc., in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

WE WILL make Bob R. Hawkins whole, with interest, for any loss of wages and benefits suffered by reason of the discrimination against him, from the date of his discharge to his reinstatement by Dunlap & Company, Inc., to his former or substantially equivalent job, or to the date that he secures employment with some other employer substantially equal to that which he formerly had with Dunlap & Company, Inc.

LOCAL 1263, INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AFL-CIO